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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,143	08/28/2001	Katsunori Murozaki	7217/65201	5891
7590	02/15/2005		EXAMINER	
COOPER & DUNHAM LLP 1185 Avenue of the Americas New York, NY 10036				JAMAL, ALEXANDER
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/941,143	MUROZAKI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Alexander Jamal	2643

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 August 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Response to Amendment***

1. Based upon the submitted amendment (8-11-2004), examiner notes that claim 1 has been amended, claim 2 has been cancelled, and claims 3-7 have been added.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 3,5,6 rejected under 35 U.S.C. 102(e) as being anticipated by Tsuhako (6434250).**

As per **claim 3**, Tsuhako discloses a headphone device comprising a headband (Fig. 2) coupled to a hanger (comprising portion 14' in Fig. 2 and mounting device 56 in Fig. 4A.). The device further comprises an ear device (portions 16' and 18' in Fig. 2) coupled to the inside of the hanger portion and used to contact the user's ear and prevent

slipping. The headphone main body 20' in Fig. 2 (or main body 54 in Fig. 2A) is positioned against the ear of a user, and supported by the ear device (ear device coupled between the pinna and the head), such that the inclination angle of the main body is substantially equal to the ear inclination (Col 4 lines 25-41). The hanger portion is expandable and contractable via the headband unit (Fig. 2, Col 4 lines 30-35). The speaker housing 54 (which comprises the earpad for coupling to the user's ear, Fig. 2) is attached to one end of hanger 56, with the other end of the hanger being attached to the headband. The arm (portions 16' and 18') in combination with the expansion/contraction provided by the headband provide the main body with an inclination angle that is substantially equal to the ear inclination.

As per **claim 5**, the arm is arch shaped (Fig. 2).

As per **claim 6**, the device comprises cord 21' (Fig. 2).

***Claim Rejections - 35 USC § 103***

- 2.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 3.** **Claim 1**, rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuhako (6434250), and further in view of Pitel (6154539).

As per **claim 1**, Tsuhako discloses a headphone device comprising a headband (Fig. 2) coupled to a hanger (comprising portion 14' in Fig. 2 and mounting device 56 in Fig. 4A.). The device further comprises an ear device (portions 16' and 18' in Fig. 2) coupled to the inside of the hanger portion and used to contact the user's ear and prevent slipping. The headphone main body 20' in Fig. 2 (or main body 54 in Fig. 2A) is positioned against the ear of a user, and supported by the ear device (ear device coupled between the pinna and the head), such that the inclination angle of the main body is substantially equal to the ear inclination (Col 4 lines 25-41). However, Tsuhako does not disclose what the headband and ear device are made of.

Pitel discloses a headset in which the headband portion is made of plastic (resilient). It would have been obvious to one of ordinary skill in the art at the time of this application that the headband and ear device could be made of plastic for the advantage that plastic is resilient.

4. **Claims 4,7** rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuhako (6434250) as applied to claim 3, and further in view of Pitel (6154539).

As per **claims 4 and 7**, Tsuhako discloses applicant's claim 3 and audio signal cable 21' (Fig. 2), however, Tsuhako does not disclose a microphone coupled to the speaker housing.

Pitel discloses a headset comprising a microphone portion 18 extruding from the speaker housing (Fig. 1). Pitel teaches that the configuration of the microphone will

allow for handsfree use of the microphone (Col 1 lines 5-25). It would have been obvious to one of ordinary skill in the art at the time of this application to implement a microphone attached to the speaker housing for the purpose of allowing the user to use the microphone (such as in a cell phone for example) in a handfree manner (increased safety).

### **Response to Arguments**

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Jamal whose telephone number is 703-305-3433. The examiner can normally be reached on M-F 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis A Kuntz can be reached on 703-305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9315 for After Final communications.

AJ  
February 9, 2005

  
CURTIS KUNTZ  
SUPERVISORY PATENT EXAMINER  
PCY CENTER 2600